

REFERENCE TITLE: counterfeit marks; intellectual property

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1038

Introduced by
Senator Harper

AN ACT

AMENDING SECTION 44-1453, ARIZONA REVISED STATUTES; RELATING TO THE
REGISTRATION AND PROTECTION OF TRADEMARKS AND SERVICE MARKS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 44-1453, Arizona Revised Statutes, is amended to
3 read:

4 44-1453. Counterfeit marks; violation; classification;
5 presumption; seizure; forfeiture; remedies;
6 definitions

7 A. Except as provided in subsections B, ~~and~~ C AND D, a person who
8 knowingly and with intent to sell or distribute uses, displays, advertises,
9 distributes, offers for sale, sells or possesses any item that bears a
10 counterfeit mark or any service that is identified by a counterfeit mark is
11 guilty of a class 1 misdemeanor.

12 B. A person who commits any act proscribed in subsection A is guilty
13 of a class 6 felony if either:

14 1. The person has one previous conviction under this section.

15 2. At least one of the following is true:

16 (a) The violation involves more than one hundred but fewer than one
17 thousand items that bear the counterfeit mark.

18 (b) The total retail value of all of the items or services that bear
19 or are identified by the counterfeit mark is more than one thousand dollars
20 but less than ten thousand dollars.

21 C. A person who knowingly manufactures or produces with intent to sell
22 or distribute any item that bears a counterfeit mark or any service that is
23 identified by a counterfeit mark is guilty of a class 5 felony.

24 D. A person who commits any act proscribed by subsection A is guilty
25 of a class 5 felony if either:

26 1. The person has two or more previous convictions under this section.

27 2. At least one of the following is true:

28 (a) The violation involves at least one thousand items that bear the
29 counterfeit mark.

30 (b) The total retail value of all of the items or services that bear
31 or are identified by the counterfeit mark is at least ten thousand dollars.

32 E. A person who knowingly has possession, custody or control of at
33 least twenty-six items that bear a counterfeit mark is presumed to possess
34 the items with intent to sell or distribute the items.

35 F. In any criminal proceeding in which a person is convicted of a
36 violation of this section, the court may order the convicted person to pay
37 restitution to the intellectual property owner.

38 G. A law enforcement officer may seize any item that bears a
39 counterfeit mark and all other personal property that is employed or used in
40 connection with a violation of this section, including any items, objects,
41 tools, machines, equipment, instrumentalities or vehicles. All personal
42 property seized pursuant to this section shall be forfeited pursuant to title
43 13, chapter 39.

44 H. After a disposition or final judgment, on the request of the
45 intellectual property owner, a law enforcement officer shall release all

1 seized items that bear a counterfeit mark to the intellectual property owner
2 for destruction or disposition. If the intellectual property owner does not
3 request the release of the seized items that bear a counterfeit mark, the law
4 enforcement officer shall destroy the items unless the intellectual property
5 owner consents to another form of disposition.

6 I. Any certificate of registration pursuant to this article or federal
7 law of any intellectual property is prima facie evidence of the facts stated
8 in the certificate of registration.

9 J. In addition to the remedies provided in section 44-1451, an
10 intellectual property owner who sustains a loss as a result of a violation of
11 this section may file an action in superior court for recovery of up to
12 treble damages and the costs of the suit including reasonable attorney fees.

13 K. The remedies provided in this section are cumulative to all other
14 civil and criminal remedies provided by law.

15 L. For the purposes of this section, the quantity or retail value of
16 items or services includes the aggregate quantity or retail value of all
17 items that the defendant manufactures, uses, displays, advertises,
18 distributes, offers for sale, sells or possesses and that bear a counterfeit
19 mark or that are identified by a counterfeit mark.

20 M. For the purposes of this section:

21 1. "Counterfeit mark" means:

22 (a) Any unauthorized reproduction or copy of intellectual property.
23 (b) Intellectual property that is affixed to any item that is
24 knowingly sold, offered for sale, manufactured or distributed or to any
25 identifying services offered or rendered without the authority of the
26 intellectual property owner.

27 2. "Intellectual property" means any trademark, service mark, trade
28 name, label, term, device, design or word that is adopted or used by a person
29 to identify that person's goods or services.

30 3. "ITEM" INCLUDES:

31 (a) ANY COMPONENT THAT IS DESIGNED, MARKETED OR OTHERWISE INTENDED TO
32 BE USED ON OR IN CONNECTION WITH ANY GOODS OR SERVICES.

33 (b) ANY COMPONENT OF A FINISHED PRODUCT.

34 3. 4. "Retail value" means:

35 (a) For items that bear a counterfeit mark and that are components of
36 a finished product, the counterfeiter's regular selling price of the finished
37 product on or in which the component would be utilized.

38 (b) For all other items that bear a counterfeit mark or services that
39 are identified by a counterfeit mark, the counterfeiter's regular selling
40 price for those items or services.